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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 131030919-4436-02]

RIN 0648-BD73

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Reporting Requirements; Unused Catch Carryover

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing two measures in this rulemaking: A requirement for daily Vessel Monitoring System (VMS) catch reporting for vessels declared to fish in the Eastern U.S./Canada Area; and the de minimis amount of unused fishing year (FY) 2013 sector annual catch entitlement (ACE) that may be carried over, beginning in FY 2014, without being subject to potential accountability measures. The revision to the reporting requirement is necessary to ensure accurate and timely Eastern U.S./Canada Area catch reporting for quota monitoring purposes. The de minimis carryover amount is necessary to complete the carryover process NMFS described for FY 2014 in conjunction with the May 2013 rulemaking for Framework Adjustment 50 to the Northeast (NE) Multispecies Fishery Management Plan (FMP).

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER]. The de minimis carryover amount outlined in Table 1 in the preamble is effective

[insert date 30 days after date of publication in the FEDERAL REGISTER], through April 30, 2015.

ADDRESSES: Copies of Framework 50 and its associated documents, including the environmental assessment (EA), the Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA) prepared by the Council and NMFS are available from John K. Bullard, Regional Administrator, NMFS Northeast Regional Office (NERO), 55 Great Republic Drive, Gloucester, MA 01930. The previously listed documents are also accessible via the Internet at: <http://www.nero.noaa.gov/sfd/sfdmulti.html>.

FOR FURTHER INFORMATION CONTACT: For information on the Eastern U.S./Canada Area reporting requirements in this rule contact Liz Sullivan, Fishery Management Specialist, phone: 978-282-8493. For information on the unused ACE de minimis carryover amount, contact Mike Ruccio, Fishery Policy Analyst, phone: 978-281-9104.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

Eastern U.S./Canada Area Daily VMS Reporting. Prior to FY 2013, the regulatory text for the catch monitoring/attribution program for Georges Bank (GB) cod and haddock required that all GB cod and haddock caught on a trip in which a vessel fished in both the Western and Eastern U.S./Canada Areas be attributed to the Eastern Area. In practice, we attributed catch of these stocks to areas fished based on our understanding that Amendment 16 to the FMP intended this result; however, the regulatory text was inadvertently left unchanged from pre-Amendment 16 measures.

In commenting on a proposed rule for Amendment 48 to the FMP (78 FR 18188; March 25, 2013), which included a measure to correct this inadvertent language holdover, the New

England Fishery Management Council (Council) objected to the proposed revision, stating it was inconsistent with their intent in Amendment 16. Because the proposed change was meant to reflect Council intent regarding Amendment 16, we withdrew its proposed revision, leaving the original text in place in the final rule (i.e., GB cod and haddock catch would be attributed to the Eastern U.S./Canada Area). We noted this change as an interim measure, but asked for comments as it varied from the proposed rule. We then received a second comment letter from the Council on the interim measure, retracting the first statement of intent, and supporting the approach we first proposed. The Council also suggested that the requirement for daily reporting of catch in the Eastern Area should be reinstituted as allowed under Amendment 16 through Regional Administrator authority to better ensure timely and accurate reporting for quota monitoring purposes.

Based on the second Council letter, we announced on July 10, 2013, that Eastern U.S./Canada Area catch monitoring was being changed from the interim method to a system that apportions catch based on area fished, consistent with the recommendation of the Council and the 2013 proposed rule measure. We published the final rule for this monitoring method on August 29, 2013 (78 FR 53363). Accounting for all FY 2013 trips has been retroactively revised from the interim approach to the area fished method. Such changes were considered to be within the purview of the Regional Administrator (§ 648.85(a)(3)(ii)(A)).

The Amendment 16 final rule (75 FR 18262; April 9, 2010) also intended to remove the requirement for sector vessels to submit daily VMS catch reports when declared into the U.S./Canada Management Area, as well as the two Eastern U.S./Canada Special Access Programs (SAPs; the Closed Area II Yellowtail Flounder/Haddock SAP and the Eastern U.S./Canada Haddock SAP), because the requirement for a weekly sector manager report was

determined to be sufficient by the Regional Administrator. This intent was captured in the preamble of the proposed and final rules for Amendment 16; however, this change was not reflected in the regulatory text at § 648.85(a)(3)(v). Subsequently, the Council requested that we implement a daily reporting requirement for the Eastern U.S./Canada Area to address misreporting and ensure more accurate and timely reporting for this area. As part of the rulemaking on August 29, 2013 (78 FR 53363), we announced our intention to require sector vessels declared to fish in the Eastern U.S./Canada Area to submit daily VMS catch reports. We did not, and do not, intend to change the weekly reporting requirement for vessels declared only into the Western U.S./Canada Area.

Because the daily reporting requirement is already specified in the regulations (§ 648.85(a)(3)(v)) for vessels declared into the Eastern U.S./Canada Area, this provision need not change, except to clarify that the daily reporting requirement does not apply to vessels declared only into the Western U.S./Canada Area. Accordingly, this action modifies the reporting requirement of § 648.85(a)(3)(v) to clarify that only sector vessels that have declared into the Eastern U.S./Canada Area are required to submit daily catch reports, and that, for vessels declared only into the Western U.S./Canada Area, sectors must continue to submit weekly sector catch reports. The intent of this action is to improve the accuracy of reporting of the Eastern U.S./Canada Area.

De Minimis Unused Sector ACE Carryover. In conjunction with the rule implementing Framework Adjustment 50 for FY 2013, we issued rulemaking under section 305(d) of the Magnuson-Stevens Act to clarify how accounting for year-to-year unused sector ACE carryover would be handled beginning in FY 2014 (78 FR 26172; May 3, 2013). The applicable

regulations outlining the carryover system, including the revisions made in Framework Adjustment 50, can be found in § 648.87(b)(1)(i)(F)(1)-(5).

Our clarification specified that sectors would be held accountable for any overage of the sector-specific sub-annual catch limit (sub-ACL) if the total fishery level ACL were exceeded in any given year, consistent with the existing accountability measures regulations. The clarification makes explicitly clear that sectors would be accountable for carried-over catch used if the total ACL is exceeded, except for a nominal de minimis amount to be determined by NMFS. We believe providing a nominal amount of carryover is an important safety consideration because, by allowing some carryover, vessels could elect to forego some portion of, or entire, late-season fishing trips for safety reasons, knowing that they could instead harvest the de minimis amount in the next fishing year, irrespective of any accountability measures. Substantial explanation of the carryover program accounting is provided in Framework 50 and the associated rulemaking documents, and is not repeated here.

Recently, the US District Court (District of Columbia) found that the FY 2013 carryover catch accounting measures implemented as a transition-year approach, before a system that maintained full accountability if total ACLs are exceeded, violated the Magnuson-Stevens Act. We will be developing a separate emergency rulemaking to implement a remedy for carryover of FY 2013 catch to 2014.

## 2. Approved Measures

Eastern U.S./Canada Area Daily VMS Reporting. NMFS approves the requirement for sector vessels declared to fish in the Eastern U.S./Canada Area to submit daily VMS catch reports. The reports must be submitted in 24-hour intervals for each day, and are required to include at least the following information:

1. VTR serial number or other universal ID specified by the Regional Administrator;
2. Date fish were caught and statistical area in which the fish were caught; and
3. Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept (in pounds, live weight) in each broad stock area, specified in § 648.10(k)(3), as instructed by the Regional Administrator.

The regulations at § 648.85(a)(3)(v) currently require sector vessels to submit daily reports if they declare into a U.S./Canada Area. This rule does not require a substantive change to the regulations for vessels declared into the Eastern U.S./Canada Area, because daily reporting is needed in the Eastern U.S./Canada Area to ensure accurate catch reporting. However, although the previous regulatory text required daily reporting for vessels declared into the Western U.S./Canada Area, weekly sector catch reports have been determined to be sufficient for that area. Therefore, the regulatory text at § 648.85(a)(3)(v) is modified to delete the daily reporting requirement for such vessels.

Pursuant to the regulations at § 648.10(k)(2), vessels that have declared their intent to fish within multiple Broad Stock Areas must submit a trip-level hail report via VMS. This report must include the landed weight of regulated species and total retained catch, unless the vessel is fishing in a special management program such as the Eastern U.S./Canada Area, and is required to submit daily reports via VMS. With this rule, a sector vessel on a trip declared into the Eastern U.S./Canada Area and fishing in multiple Broad Stock Areas is exempt from the requirement to submit a trip-level catch report.

A sector vessel using an annually approved sector exemption from the requirement to declare intent to fish in either the Closed Area II Yellowtail Flounder/Haddock SAP or the

Eastern U.S./Canada Haddock SAP from the dock (known as flexing) will be required to submit a report to indicate their catch for the trip up until the time they declare into the Eastern U.S./Canada SAP. Once declared into either of these SAPs, the sector vessel must submit daily reports for the remainder of the trip.

De Minimis Unused Sector ACE Carryover. NMFS approves the measure to provide 1 percent of the annual sector sub-annual catch limit (sub-ACL) as the de minimis carryover amount, starting in FY 2014. This de minimis amount of carryover, if used, will not be specifically counted against the sector ACE or ACL for accountability purposes. The full sub-ACL is still allocated to sectors as ACE (i.e., not reduced by 1 percent). The existing carryover provision that allows up to 10 percent of unused sector ACE to be carried over remains in effect; however, any carried over catch in excess of the de minimis amount will be counted against the sector ACE and overall ACL for accountability purposes if the total fishery-level ACL is exceeded.

By using a nominal amount of the sector-specific sub-ACL in the derivation process, the resulting 1-percent de minimis carryover falls within the management uncertainty buffer established for sectors. This approach ensures that the de minimis value is in line with catch limits established for the FY in which carryover may be taken. For FY 2015 and beyond, NMFS approves this approach of using 1 percent of the sector sub-ACL for the year in which carryover would be harvested as the default de minimis amount. The actual value may vary year-to-year based on the sub-ACLs specified for the year. NMFS will publish the actual de minimis amount in conjunction with either Council initiated frameworks implementing ACLs or in sector ACE adjustment rules.

Table 1. Potential FY 2014 catch limit information, de minimis carryover amounts, total potential catch, and impact of realizing total potential catch. All Weights in Metric Tons

Stock or species	2014 Potential Catch Limit Information				<u>de minimis</u> amount and evaluation			
	FY 2014 OFL	FY 2014 ABC	FY 2014 Total ACL	FY 2014 Sector sub-ACL	<u>De Minimis</u> Value --1 Percent of Sector sub- ACL	Total potential catch ( <u>de minimis</u> + total ACL)	Percent of Total ACL	Percent of ABC
Georges Bank (GB) Atlantic cod	3,570	2,506	1,867	1,776	18	1,885	101.0	75.2
Gulf of Maine (GOM) Atlantic cod	1,917	1,550	1,470	812	8	1,478	100.6	95.4
GB Haddock	46,268	35,699	18,312	17,116	171	18,483	100.9	51.8
GOM Haddock	440	341	323	218	2	325	100.7	95.4
S. New England (SNE) yellowtail flounder	1,042	700	665	469	5	670	100.7	95.7
Cape Cod/GOM yellowtail flounder	936	548	523	466	5	528	100.9	96.3
American Plaice	1,981	1,515	1,442	1,357	14	1,456	100.9	96.1
Witch Flounder	1,512	783	751	599	6	757	100.8	96.7
GB Winter Flounder	4,626	3,598	3,493	3,364	34	3,527	101.0	98.0
GOM Winter Flounder	1,458	1,078	1,040	688	7	1,047	100.7	97.1
SNE/Mid-Atlantic Winter Flounder	3,372	1,676	1,612	1,074	11	1,623	100.7	96.8
Acadian Redfish	16,130	11,465	10,909	10,523	105	11,014	101.0	96.1
White Hake	6,237	4,713	4,417	4,247	42	4,459	101.0	94.6
Pollock	20,554	16,000	15,304	13,131	131	15,435	100.9	96.5

All stocks are expected to continue use of a 5 percent uncertainty buffer between ABC and ACL in FY 2014 except for GB winter flounder (3 percent).



## Corrections to the Code of Federal Regulations

NMFS modifies the text at § 648.14(k)(11)(iv)(A) to clarify the reporting requirements by removing the word “landings” from the paragraph.

NMFS modifies the text at § 648.85(a)(3)(v) in order to clarify that the authority granted to the NMFS Regional Administrator to remove the daily reporting requirements for special management programs is separate and distinct from the regulatory requirement. This modification moves the language explaining the Regional Administrator’s authority to a new subsection (§ 648.85(a)(3)(v)(B)) with a further clarification that the Regional Administrator’s authority also includes modification of reporting requirements.

## Summary of Comments Received on the Proposed Rule

On March 17, 2014, we proposed this rule and requested public comments (79 FR 14635). We received two comments, one relating to the Eastern U.S./Canada Area daily catch reporting, and the other relating to the de minimis carryover.

Comment 1: The Cape Cod Commercial Fishermen’s Alliance (CCCFA) expressed continued concern for the potential for misreporting of GB cod caught in the Eastern Area as Western Area GB cod. CCCFA stated that, although daily reporting for trips declared into the Eastern Area will help, it is insufficient to prevent the misreporting on unobserved trips catching cod.

Response: The intent of this rule is to increase accuracy of reporting, and is based on a recommendation made by the Council. We agree with the Council that daily reporting should increase the accuracy and timeliness of Eastern U.S./Canada area catch reporting for quota monitoring. However, NMFS agrees that misreporting still has the potential to occur, and welcomes suggestions that would further reduce the potential for misreporting.

Comment 2: The Council disagreed that it was within our authority under MSA section 305(d) to clarify the existing Amendment 16 carryover program. Similar comments were submitted by the Council in conjunction with Framework 50 rulemaking where we implemented carryover accounting clarification and introduced the de minimis concept.

Response: NMFS clarified in Framework 50 how carryover will be accounted for purposes of accountability measures, in order to ensure that NMFS can discharge its responsibility to implement the carryover provisions in a manner consistent with the Magnuson-Stevens Act, particularly provisions requiring the prevention of overfishing. Such clarification is well within the agency's authority and is wholly consistent with the intent of section 305(d) of the Magnuson-Stevenson Act. None of the pre-existing carryover regulations implemented by Amendment 16 were changed by this clarification: Sectors may continue to carryover up to 10 percent of unused ACE from the previous fishing year.

However, the 2014 approach allows fishermen to rely on some guarantee of a de minimis amount of carryover without consequences to promote safety at sea and management predictability.

#### Changes from the Proposed Rule

NMFS makes one change from the proposed rule in this action, in that it clarifies the manner in which a sector vessel using an annually approved sector exemption to flex into either the Closed Area II Yellowtail Flounder/Haddock SAP or the Eastern U.S./Canada Haddock SAP from the dock will submit a trip and daily reports indicating their catch.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the management measures in this final rule are consistent with

the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to the procedures established to implement section 6 of Executive Order (E.O.) 12866, the Office of Management and Budget has determined that this final rule is not significant.

This final rule does not contain policies with federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. We received no comments on that certification. As a result, a regulatory flexibility analysis is not required, and was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 22, 2014

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.14, revise paragraph (k)(11)(iv)(A) to read as follows:

§ 648.14 Prohibitions.

\* \* \* \* \*

(k) \* \* \*

(11) \* \* \*

(iv) \* \* \* (A) If fishing under a NE multispecies DAS or on a sector trip in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report in accordance with § 648.85(a)(3)(v).

\* \* \* \* \*

3. In § 648.85, revise paragraph (a)(3)(v) to read as follows:

§ 648.85 Special management programs.

(a) \* \* \*

(3) \* \* \*

(v) Reporting. (A) The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. The owner or operator of a sector vessel must submit daily reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into the Eastern U.S./Canada Area. Vessels subject to the daily reporting requirement must report daily

for the entire fishing trip, regardless of what areas are fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

- (1) VTR serial number or other universal ID specified by the Regional Administrator;
- (2) Date fish were caught and statistical area in which fish were caught; and
- (3) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept (in pounds, live weight) in each broad stock area, specified in § 648.10(k)(3), as instructed by the Regional Administrator.

(B) The Regional Administrator may remove or modify the reporting requirement for sector vessels in § 648.85(a)(3)(v) in a manner consistent with the Administrative Procedure Act.

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[FR Doc. 2014-12538 Filed 05/29/2014 at 8:45 am; Publication Date: 05/30/2014]